

E-commerce Disputes and Digital Justice Platforms – A Developmental Perspective

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Abstract

Purpose: E-commerce businesses has witnessed an exponential growth due to rapid advancements and innovations in the digital medium which has become a backbone for various transactions happening in the corporate business world and well preferred by business/service providers and consumers to have access to and perform transactions digitally both in the domestic and cross border markets. The unprecedented development of ICT environment has increased the e-commerce transactions which has led to the increase of e-commerce disputes. The current COVID19 pandemic has transitioned majority of the legal functions to the virtual environment across the world. This research paper seeks to analyze the recent trends in the digital justice platforms dealing with e-commerce disputes and its effectiveness in administering justice.

Design/Methodology/Approach: This study intends to explore the recent trends in the use of digital platforms in dealing with e-commerce disputes, both business and consumer disputes replacing the traditional processes which are often complex and inconvenient and attempts to address the efficiency and effectiveness of these online platforms in administering digital justice by exercising the strict principles of procedural fairness. The present study will attempt to highlight the trends in the digital justice system and the best international practices in dealing with e-commerce disputes.

Findings: The review of various articles available in the scientific databases and the published material in the legal journals has provided an update on the recent trends and developments in resolving ecommerce disputes through the online dispute resolutions systems. The digital platforms have allowed various Alternative Dispute Resolution Systems to use the virtual process by incorporating Artificial Intelligence and to provide the future use of virtual platforms in the adjudicatory system.

Research Limitations/Implications: The focus of this research paper is limited to electronic contracts, business to business and business to consumer contracts.

Practical Implications: Due to the advancements in this area, it is high time for legislators to promulgate regulations by following the international best practices formulating effective justice administration machineries to deal with vital issues in this dynamic field.

Originality/Value: This study appreciates the developments and the implementation of digital platforms dealing with e-commerce disputes as this makes the justice machinery accessible to

businesses and consumers in the e-commerce matters which reinforces the confidence and trust in the commercial/consumer transactions by exercising fairness in the decision-making process. Online Dispute Resolution has the potential to revolutionize the way in which small claims are dealt with in the global marketplace.

Keywords: Administration of Justice, Artificial Intelligence, Dispute Resolution, Procedural Fairness, Digital Justice.

Paper Type: Conceptual Paper

1. Introduction

The ideologies of administration of justice is based on two major terminologies ‘justice’ and ‘access to justice’. This has raised various issues and several factors must be considered to see how justice is rendered and to what extent people have direct access to justice. One of the very famous authors, Rebecca Sandefur (2019) in an article, “Access to what?” has indicated that various issues and problems are not generally considered legally and the requirement of seeking justice purely depends on how the issue or the problem is substantiated or framed to get it resolved. On a regular basis, when a legal problem arises, people may have to rely upon the relevant substantive and procedural rules or norms which governs the issue and then it goes further to seek appropriate justice through the resolution of disputes. The entire process must be carried out with the assistance of the lawyer to get the right justice. People who cannot afford time and money to carry out the process in seeking justice on the issues or claims on their part must forgo their rights. The reason behind this is that people make different deals and arrangements and they have different access to the judicial process and the attorneys which in fact make them the most vulnerable to have access to justice.

In the Electronic Commerce environment, based on the technicalities relating to their transactions, there seems to be different access to justice especially in the case of business to business and business to consumer contracts. The concept of access to justice can be expanded, to avoid the practical difficulties confronted before the regular courts, where the legal issues associated with the civil/commercial transactions can be lawfully resolved. Alternative Dispute Resolution mechanisms plays an important role in the last few decades providing access to justice giving appropriate remedies outside of the courts with less legal formalities.

Civil courts generally are dominated by various cases where one party who is being sued will need to engage or not have a legal attorney to represent and in the majority of these cases, the other party in the case who is called as a defendant will not respond to the suit brought against him due to an expensive procedure and that would lead to an automatic ruling made by the court in the form of a default judgment in favor of the plaintiff. This ex-parte judgment will create serious consequences on the part of the defendant where he is obligated to comply with the order. When the parties to the dispute participate in the trial process carried out by the court, there is a possibility where the case can be resolved based on the merits of the case and if the parties do prefer to make an amicable settlement between them to resolve the matter on their own is possible and can be settled out of the court without seeing a judge. This eliminates various issues disputants face to appear in the courtroom seeking appropriate justice on their claims.

Considering the practical issues dealing with the face-to-face physical procedures and the compliance of the due process of law, the policy makers have come up with formulating new

avenues with the assistance of technology, the alternative and online dispute resolution methods, to provide easy and fair justice to litigants with a lot of advantages like response rates on the part of the defendants in the cases, reduction of time for the courts and also expedite cases. This research paper seeks to analyze the recent trends in the digital justice platforms dealing with e-commerce disputes and its effectiveness in administering justice.

2. Literature review

Digital justice mechanisms are an innovative model with an objective to resolve conflicts, grievances, and issues in the present situation where both business providers and consumers have started to utilize virtual online environment to perform and execute various contracts (Cortes, 2011). Since the transactions originate through the internet medium, the same which creates grievances between parties can be resolved using the same medium and platform as the legal action through the traditional process may not be suitable or most appropriate to remedy for the disputes. Regarding the development of Online Dispute Resolution (ODR), there needs to be essentially four different stages and they are illustrated as follow:

- **The first stage** was from 1990 to 1996 which was an early stage where electronic related resolution mechanisms were tested.
- In **the second stage**, where in late 1990s ODR was developed and commercial Internet portals which offered services in this field was well established.
- **The third stage** was from 1999 to 2000 where it was based on the economic development in specific in the IT sector, where a lot of companies initiated various projects exclusively on this area which is online dispute resolution and they came up with frameworks and software so as to institutionalize the ODR techniques.
- In the year 2001, **the fourth stage** of ODR which was an institutional stage where the ODR techniques and technology tools was introduced into the justice administration machinery.

The first case of ODR was initiated in the United States of America where the opponent in the dispute decided to seek a new mechanism to resolve their dispute (Wang, 2008). Mediation procedures through email communications was introduced by the famous and leading promoters of the ODR, Ethan Katsh and Janet Rifkin and this was successful where parties were able to resolve their problem by way of an amicable settlement. An Online Ombuds Office was founded by the promoters of ODR which offered mediation services for eBay company through there auction portal (Ethan et al., 2001).

Square Trade portal was one of the very first commercial ODR providers dealing with the consumer disputes in the US market. Online mediation was very successful where it can happen by way of initiating a proceeding in the form of filing a complaint form, where people have an option to choose the dispute resolution method they would prefer to. Upon acceptance of the mechanism for resolution, the respondent in the case would have an option to choose. In case if they could not reach an amicable settlement, the parties would be directed to go for the negotiation stage. The entire process happens via e-mail communications, which eliminates face to face communication or court involvement.

Another milestone of early ODR portal that offered online mediation through automatic procedure known as CyberSettle which was established in the year 1998 in the United States of America.

The functionality aspect of this portal was that it has a network of specialized Internet applications where various forms of communication can be used for the process to be facilitated. The system is designed to enable negotiations to take place through the online platform providing appropriate information with respect to the details of the case with the personal details of the disputants. The procedure is initiated by an open invitation for a voluntary participation on the part of the other person which is described as blind bidding process indicating the maximum amount of money as a claim over the dispute to be paid at the time of signing a settlement (Colin, 2017).

European Union started ODR services through appropriate systems only in the early 21st century unlike US. But there exist several entities who came forward providing ODR services. Presently, some of the very famous ODR services in the European Union have already replaced the systems with the new methods of ODR systems. European Union came up with a regulation promulgated by the European Parliament and council in the year 2013 on online resolution of disputes for consumer claims and a platform for ODR services for consumer disputes exclusively was launched in the year 2016 which became very famous among consumers and they can have a speedy disposal of their claims especially for small value claims (Cortes, 2015).

3. Methodology

This study intends to explore the recent developments and trends in the use of online dispute resolution within the business arena dealing with e-commerce disputes, both business and consumer disputes replacing the traditional processes which are often complex, expensive, lengthy, and inconvenient. The study also will offer insights on the efficiency and effectiveness of the online platforms in administering digital justice by exercising the strict principles of procedural fairness. To fulfill the study objectives, secondary data review will be undertaken through the review of various articles that are available in the scientific databases and the published material in the legal journals to solicit the most updated, latest trends and developments in resolving ecommerce disputes.

4. Online Dispute Resolution (ODR) and Access to Justice

One of the major emerging technological tools is the Online dispute resolution (ODR) which enable disputants to resolve their claims online without stepping into a courtroom for an appropriate redressal through the judicial process. ODR is very well prevalent which is used to resolve in dealing with some types of cases like legal issues pertaining to personal laws, etc. This technology tool makes the entire court process highly effective and efficient which acts as an alternative way to resolve legal matters by overcoming the difficulties regarding physical appearance of the parties before the courts without dispensing with the administrative procedures of the court system (Naomi, 2020).

The development of ODR has taken place in the private sector with special emphasis on facilitating the whole process to provide a speedy resolution of conflicts or disputes between the parties concerned. This pave way for quicker resolution of low value claims, huge cases can be dealt with easily with less expenses or no expenses and less consumption of time (Amy, 2020).

Though ODR is not a preferred or an appropriate mechanism for all legal issues, but it is useful and appropriate to deal with some of the legal issues dealing with high volume cases where the matters are less sensitive. This mechanism enables disputants to communicate information related to the disputes and their claims to each other in the online platform where a resolution can be reached which can be well recognized and subjected for enforcement by the courts.

The Online Dispute Resolution may act as an effective mechanism in two different forms. The first one in relation to the adjudicatory court processes dealing with low value claims where the ICT can be integrated within the processes of a court or a tribunal, which is a quasi-judicial authority. This can be better described as Court-oriented ODR, whereas the second one can be in relation to the alternative ways of resolving disputes where ODR to be closely allied to the formal court processes which can be called as Online Alternative Dispute Resolution (oADR) or Electronic ADR (eADR). The second system allows various option to the disputants to use mediation, conciliation, arbitration as a mode of resolving their disputes where the outcome of the process be linked with the formal process. The court oriented ODR comprises of Online Small claims court and Online Tribunals/forums, whereas the oADR comprises of online mediation, online conciliation, and online arbitration (Tan, 2019). For further illustration on the traditional and online dispute resolution process are indicated in figure 1 and 2.

Dispute Resolution Process

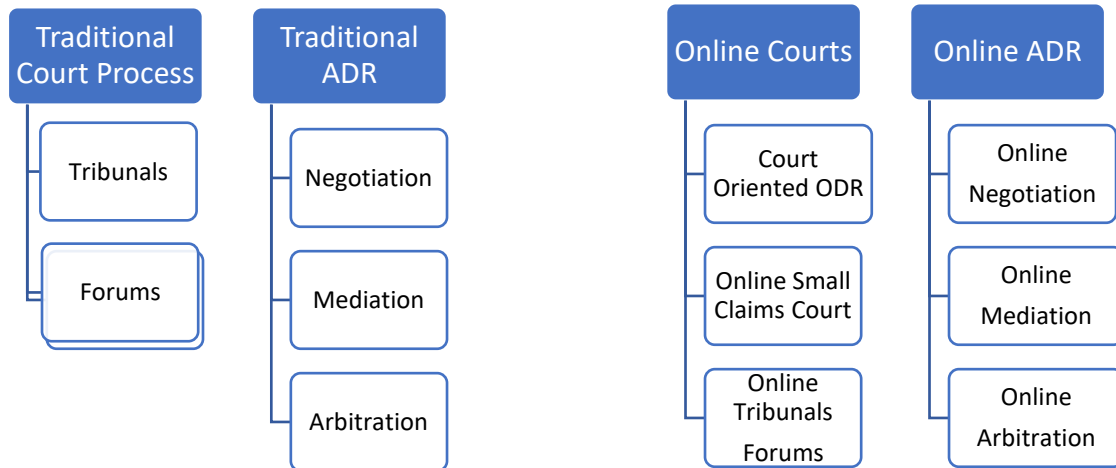


Figure1: Traditional DR process

Figure 2: DR process + ICT

At this point of time as the world is witnessing a pandemic situation due to COVID19, as the conditions are very far from normal which may even continue for several months or years in the near future, justice administration which is really delayed on the cases brought or pending before the courts and this pandemic has made the situation really worse. The judiciary is already facing inordinate delays in disposing of the cases with overburdened cases. This is the right time where an improvised and effective solution is utmost required to remove the pressures on the part of judicial courts and to bring in Online dispute resolution in place to provide quicker remedies to the litigant public.

Due to the utility in dealing with and resolving low value claims, ODR has really started its operation to move from the private sector to public courts. Large volume cases can be handled easily without any hassles by using a wide range of technological tools and this was discovered through a survey conducted by a non-profit organization, National Center for State Courts (NCSC) In the United States of America where more than 80% of the respondents of the survey have expressed that they prefer online mode of redress in the local courts which includes the ability on

the part of the disputants seeking appropriate guidance from the court administrative staffs rather coming over to the physical courts to file their claims and cases (NCSC, 2015). The NCSC objective is to improve the judicial administration of the courts across the world where they have considered an online platform to be formulated by the name of 'Court ODR' if it is either court annexed or a digital space. The digital space can be well described as where appropriate online resource is to be used to manage a particular case from the start of the proceeding until a conclusion is drawn and it is not required or unnecessary that the disputants have to come over to the Court House at any point of time.

Some of the key functions which can be built into the Court ODR processes include asynchronous communication, legal information, management of electronic documents, role of mediators, negotiation phase, creation of documents and methods of payment. The communication between individual disputants using ODR can take place at any point of time either during or out of the court working hours, ability to leave messages for the disputants and notification of responses. The mechanism is designed to provide appropriate legal information without a requirement to seek any sort of advice about the procedural requirements and the choices available at each stage of the process to the disputants. The mechanism also facilitates easy sharing of material documents related to the case from each disputant which can be filed electronically, and the disputants may have direct access to it. The disputants also have an option to choose either the negotiation phase or the mediation phase before the case can be tried by way of a pure judicial process. Upon reaching any agreement between the disputants either at the negotiation or mediation phase it can be converted as agreed upon terms into court documents and the same can be affected by utilizing the payment options available through the platform.

5. Digital Justice Platforms in various jurisdictions

5.1 Modria

The purpose of this establishment is to render ODR services for low value and high value claims and disputes. In the case of low value claims, the company has developed a stage-by-stage approach in dealing with the dispute to arrive at a conclusion. The initial stage is the diagnosis stage where at this stage the legal issue involved in the case will be identified. This is an important stage where the complaints will be filtered to see and ascertain the real legal issue, or the rights affected. The second stage in the system is the negotiation module/stage and the parties to the dispute will be given an opportunity, with the summary of the issues, to make proposals for the purpose of the settlements and the system also encourages and suggest settlements for the disputants to arrive at a conclusion on their own based on their choice. If no settlement reached between parties, the issue to be resolved goes to the next stage which is mediation module, where a neutral third party will be nominated to propose settlements and to encourage the disputants to reach an amicable friendly settlement. If there is no compromised settlement arrived, the matter goes to the next stage where an arbitrator adjudicates the dispute based on the merits of the case. Modria observes that the maximum number of disputes referred to the company through their developed ODR system is resolved at the first two stages where there is no requirement to have human intervention to resolve their claims. The company also claims that ODR software is effectively used to deal with or tackle even higher value claims or disputes and complex and sensitive disputes as well.

5.2 CyberSettle

An exclusive negotiation module takes place through the ODR platform developed without human intervention and is better described as blind bidding process with an objective to initiate and determine settlements for economic claims where the liability is not contested. The bidding process shall continue until a conclusion is drawn on the dispute.

5.3 Virtual Magistrate Project

Virtual Magistrate Project (VMP), is an online arbitration project relating to online related activities suggest various disputes which may originate from copyright infringements and other intellectual property laws disputes and includes disputes relating to social networking sites. This is a combined initiative in the form of a project by National Center for Automated Information Research Cyberspace Law Institute in association with American Arbitration Association and Villanova Centre for Information Law and Policy.

5.4 Smart Settle

Smart Settle is a system developed by a company, I-Can Solution Inc., in Canada which is a negotiation support system which has the objective of assisting the parties to exchange their offers and establish the grounds of action. The system helps the disputants to identify the possibilities of settling the matter with their preferences and priorities which can be disclosed to the authorities before it can be set to the opposite party. If the disputants can reach or arrive at a conclusion on their own, smart settle will carry out an analysis of the arrangement or agreement made between them and will attempt to maximize their benefits and will provide suggestions to improve the outcome achieved. It is highly recommendatory, and parties can still stick to their solution achieved.

6. ODR Developments and its Practices

6.1 UNCITRAL

United Nations Commission on International Trade law is very active working on transnational norms of ODR. Taking into consideration the rapid increase of cross border transactions happening online and the parallel need for a system or mechanism for dealing with or resolving disputes arising from such transactions, UNCITRAL has agreed at its 43rd session to undertake specialized work in ODR.

UNCITRAL plays a major role towards setting up a working group to formulate procedures on ODR. Section 3 of the UNCITRAL published document titled 'Technical Notes on Online Dispute Resolution 2017' states three stages in the process of ODR as follows:

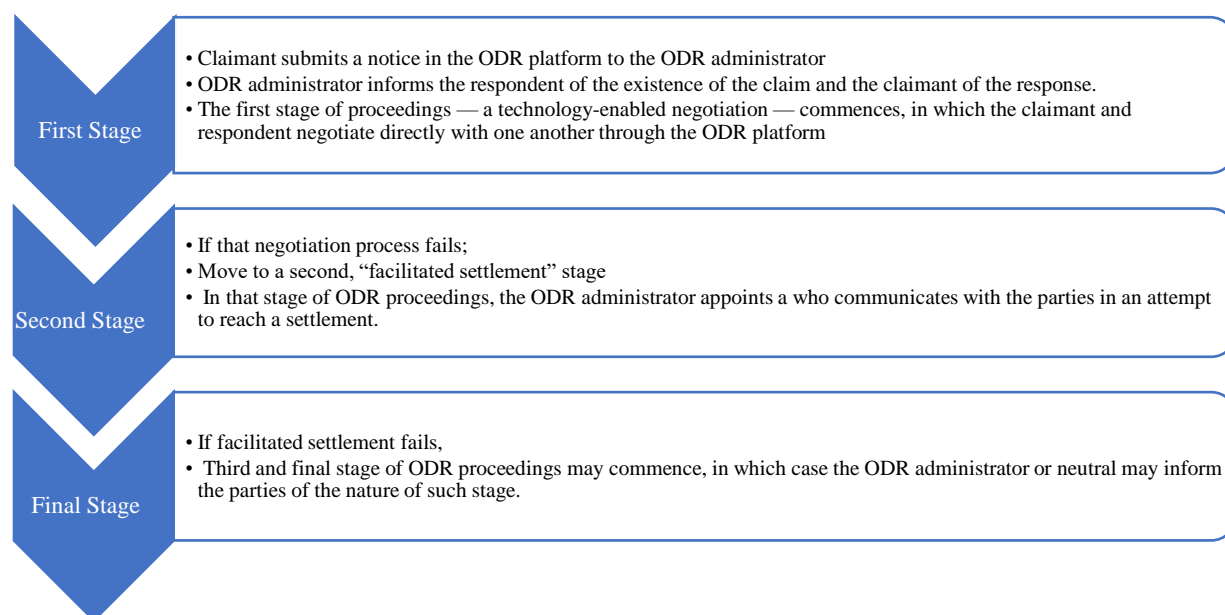


Figure 3: Process of ODR prescribed by UNCITRAL

6.2 European Union Regulation on ODR Platform

The European Online Dispute Resolution Platform was established in the year 2016 under the European Union regulation of 2013. This provides protection to online consumers, industry, and the ADR service providers to file their disputes in the online environment. The platform established was designed as a multilingual website which is an interactive site as well where consumers who originate from different countries let in the European Union can file their case and contest. This provides a single window for both consumers and the businesses to resolve their disputes out of the court they got the contractual obligations originating from online transactions. This initiative is to protect online consumers who purchases online and any sort of grievances relating to their contracts can be brought for an action online to redress their claims.

6.3 International Council for Online Dispute Resolution (ICODR)

ICODR, is an international nonprofit consortium established in the year 2017 aims to assist in formulating international standards for online dispute resolution. ICODR do not directly involved in the ODR but the prime objective is to support in adopting open standards across borders using ICT to promote and conduct the ODR where the systems can be easily accessible with high confidentiality and equal treatment of parties with a fair and impartial procedure employed and may have a full legal character and this may protect consumers and will render the right of free access to justice.

7. International Practices of ODR: Global Analysis

7.1 The United Kingdom

An online court for claims up to £25,000 was recommended by the Civil Court Structure Review developed by Lord Justice Briggs. This is one of the most important major hierarchical change to the civil court systems which enable small value claims can be brought into the courts and can be completely resolved online. The purpose of this is to improve access to justice for litigant public

and small business operations. It was also recommended that the Online court constituted should also have three different stages of dispute resolution.

The first stage is described as stage zero where parties or the disputants with appropriate information relating to their claims where they intend to file a civil suit, can seek appropriate legal advice and this will also provide what would be the status of the case when the case is to be resolved, by giving a brief summary of the essential legal principles which may be employed. The second stage is designed to provide parties to have a discussion on the matter between them to reasonably determine what could be the nature of the dispute and also to understand the requirement of the court to provide their opinion on the matter. The third stage involves parties into the online process where it is largely automated and highly interactive. This stage is to enable the issue identification process and the relevant or related documents and evidence to be presented. The web portal would assist the disputants to create a simplified pleading which may make parties to the dispute and the court to understand the problem or the issue to be addressed by the court.

7.2 China

The Supreme People's Court of China in 2018 issued “Provisions on Several Issues Concerning the Trial of Cases by the International Courts”. This led to the development of Internet courts in three provinces (Hangzhou, Beijing and Guangzhou) in China. These courts were aimed to focus on disputes which may originate from online sale of goods and services and various other Internet related violations etc. The process of these Internet courts is to conduct the litigation process online which includes services of legal documents, evidence presentation and the trial process. The entire process of instituting the case and to reach a decision on the part of the courts to be carried out online. It was reported that the courts employ ICT tools and software such as artificial intelligence and block chain to render judgments in the cases brought before them.

7.3 France

The French ODR law has come up with certain procedures and standards for commercial ODR platforms. The platforms were designed to protect the personal data when the ODR services were used either through the mechanisms of mediation or arbitration by complying with the prescribed legal obligations. It is important to note that the ODR platforms operating are prohibited from the exclusive use of artificial intelligence (AI) or algorithms but they can use the AI components for carrying out the process with express consent from the parties concerned with respect to their use and it is also required that parties or disputants who are involved or engaged in using ODR services should have to maintain and be compliant with professional secrecy and due diligence. The law also states that the ODR platforms must be certified by an accredited institution.

7.4 Australia

An introduction of online dispute resolution took place in the State of Victoria, Australia, where it has been established as a modern tribunal by name VCAT (the Victorian Civil and Administrative Tribunal), which provides cost effective and efficient dispute resolution processes. VCAT is designed to hear disputes which involves low monetary value which can be classified as small claims and high value claims. The jurisdiction includes where the system can hear disputes which may have non-monetary consequences like tenancy issues, anti-discrimination etc. The tribunal seeks to address and enforce consumer rights and provide them with appropriate redressal and creating a deterrent effect in the mind of businesses against the violation of consumer rights. This

benefits consumers at large which includes online consumers as well to have the process online which is affordable and speedier redressal. The integration of ICT in the tribunal is aligned with the digital strategy adopted by VCAT which was set in 2017 with an objective to deliver effective online services.

8. Technology as a party for resolving disputes in the digital medium

In the present situation, majority of consumers across the world shop online. Any sort of conflicts which may arise from a typical online purchase are really not brought into the courts for appropriate redressal due to the cost of filing those claims, which may go beyond the monetary value of the claim which they have intended. This is a situation when the disputants relating to online purchases or located in different countries, where the issue of jurisdiction plays an important role to determine whether the claim application will be admitted in the court where they reside, because Internet medium is considered as a borderless environment/jurisdiction. Due to this reason, it is well evident that traditional dispute resolution process for resolving disputes is really an expensive and time-consuming process, which is sometimes highly impractical especially for resolving low value disputes, which would have originated through a cross border transaction. Though the online practice of purchasing products or commodities is fast growing as expected due to the advancements in technology, the number of disputes between website owners and the online purchases grew substantially. Redressal of consumer disputes is not only a theoretical topic, but it has a high significance on the practical relevance especially in the digital media protecting digital consumers.

Nowadays consumers are increasingly having high level of interaction in the online platforms dealing with various online businesses, making transactions and would really prefer to make use of online forums for resolving any of their conflicts or grievances which would have originated due to the transactions executed. Research studies have come up with statistical data to show that majority of the consumers across the world uses or prefer internet medium as a vehicle of communication. This is predominant in the countries like the United States, the United Kingdom, the Republic of China, South Korea, etc., where the level of Internet penetration is extremely very high with more than 90 percentage population use Internet as a medium for various services such as online banking services and various other day to day activities and it has become their lifestyle (UK office for National Statistics, 2019). The use of mobile applications through smartphones has seen an exponential growth and it was estimated across the world to be over 2 billion in the year 2015 and it has been doubled by 2020 (UK Web Host Review 2020).

Digital consumers rapidly increase due to the pandemic situation in the last one year and their interaction with the online marketplaces has dramatically risen. The online medium has empowered consumers with the appropriate information with respect to their rights associated and is readily available for consumers to have access to and to learn through the websites in which they operate or executive transactions. Previously the only way consumers will be able to have access to information is through the professionals and legal firms. This empowerment on the part of consumers supplied with full information with respect to their transactions rights has really benefited the consumer community and the vulnerability has been reduced tremendously. An average consumer is the one who is reasonably aware of and informed with necessary information as an ordinary, reasonable, and prudent individual. Since the concept of consumer varies from every country and in different jurisdictions the definition of consumer differs.

9. Conclusion and Suggestions

The ODR field has grown tremendously in terms of its scope, dealing with a variety of matters and the technological advancements has proved that ODR systems can effectively be used or designed to render justice or redress the claims. As highlighted in the article, majority of the ODR systems in practice is operating in a private setting through private business/service providers. Due to the current pandemic situation, it is well evident that majority of countries in the world have switched over to online mode of dealing with cases from traditional approaches. For the wider adoption of ODR systems, there were several issues like reliability, due process, procedural fairness, legitimacy, and standard procedures require to be addressed systematically. Presently there is no enforceable framework relating to ODR governance and there exists no strict compliance procedures formulated either through national or international regulations. But the regulate ODR processes, countries must come up with accreditation processes to ensure and create confidence on the part of the users of the ODR processes.

For an effective and successful ODR to be in place, it is very much important that an appropriate infrastructure to be created for an efficient ODR. ODR mostly deals with legal issues which are highly contentious, and it can guarantee confidentiality on the part of clients. An ODR happening in public platforms like Google Talk, zoom etc., or any other common online platforms will not be feasible. There needs to be a trusted platform exclusively for ODR mechanisms to be dealt with which will ensure legal aspects and the compliance procedures within the legal framework of each jurisdiction. It has various challenges but there needs to be codified laws which can make the ODR successful as this online ADR is going to be the future.

In the present situation, smart contracts are highly inevitable and most of the purchases are made online with a click. Corporate leaders use different modes of technological applications to make deals and those are electronically signed through online services like DocuSign. Smart contracts are very different from the traditional commercial transactions or electronic contracts which are commonly used in the online medium. The wider adoption of ODR methods for resolving e-commerce matters can happen now and in the near future, there may be a possibility in the next decades smart contracts be commonly used in all walks of life and speedier and fair redress can be achieved using ODR systems.

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